

Nuclear Regulatory Commission

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unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

(h)(1) The provisions of paragraphs (a) through (g) of this section are not applicable to the attendance and testimony of the Commissioners or NRC personnel, or to the production of records or documents in the custody thereof.

(2)(i) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise: *Provided*, That the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

(iii) No deposition of a particular named NRC employee or answer to interrogatories by NRC personnel pursuant to paragraphs (h)(2) (i) and (ii) of this section shall be required before the matters in controversy in the pro-

ceeding have been identified by order of the Commission or the presiding officer, pursuant to §2.751a, or after the beginning of the prehearing conference held pursuant to §2.752 except upon leave of the presiding officer for good cause shown.

(iv) The provisions of §2.740 (c) and (e) shall apply to interrogatories served pursuant to this paragraph.

(3) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing pursuant to §§2.744 and 2.790.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 16310, Dec. 21, 1966; 35 FR 19501, Dec. 23, 1970; 37 FR 15132, July 28, 1972; 40 FR 2973, Jan. 17, 1975]

§2.721 Atomic safety and licensing boards.

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission or the Chairman of the Atomic Safety and Licensing Board Panel deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, and to perform such other adjudicatory functions as the Commission deems appropriate. The members of an atomic safety and licensing board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission.

(b) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may constitute the alternate

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qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of such notification, serve as member of the board. In the event that an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or the Chairman of the Atomic Safety and Licensing Board Panel may appoint a member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the atomic safety and licensing board by notifying the appointee who will, as of the date of such notification, serve as a member of the Board.

(c) An atomic safety and licensing board shall have the duties and may exercise the powers of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Law Judge may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it. Two members of an atomic safety and licensing board constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings.

[31 FR 12776, Sept. 30, 1966, as amended at 33 FR 8588, June 12, 1968; 34 FR 13361, Aug. 19, 1969; 35 FR 11459, July 17, 1970; 35 FR 19658, Dec. 29, 1970; 37 FR 15132, July 28, 1972; 37 FR 28711, Dec. 29, 1972; 40 FR 51996, Nov. 7, 1975; 48 FR 52285, Nov. 17, 1983; 56 FR 29408, June 27, 1991]

§ 2.722 Special assistants to the presiding officer.

(a) In consultation with the Panel Chairman, the presiding officer may, at his discretion, appoint from the Atomic Safety and Licensing Board Panel established by the Commission, personnel to assist the presiding officer in taking evidence and preparing a suitable record for review. Such appointment may occur at any appropriate

time during the proceeding but shall, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.704. Such special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. Such interrogators shall be required to study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses on the issues of the interrogators' expertise, taking a leading role in examining such witnesses to ensure that the record is as complete as possible;

(2) Upon consent of all the parties, Special Masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of the record. Special Masters may rule on evidentiary issues brought before them, in accordance with §§ 2.743 and 2.757. Appeals from such rulings may be taken to the presiding officer in accordance with procedures which shall be established in the presiding officer's order appointing the Special Master. Special Masters' reports are advisory only; the presiding officer shall retain final authority with respect to the issues heard by the Special Master; or

(3) Alternate Atomic Safety and Licensing Board members to sit with the presiding officer, to participate in the evidentiary sessions on the issue for which the alternate members were designated by examining witnesses, and to advise the presiding officer of their conclusions through an on-the-record report. This report is advisory only; the presiding officer shall retain final authority on the issue for which the alternate member was designated.

(4) Discovery Master to rule on the matters specified in § 2.1018(a)(2) of this part.

(b) The presiding officer may, as a matter of discretion, informally seek the assistance of Members of the Atomic Safety and Licensing Board Panel to brief the presiding officer on the general technical background of subjects involving complex issues which the presiding officer might otherwise have